

## **Part 8**

### **Adjudication**

#### **34A-2-801 Initiating adjudicative proceedings -- Procedure for review of administrative action.**

- (1)
- (a) To contest an action of the employee's employer or its insurance carrier concerning a compensable industrial accident or occupational disease alleged by the employee or a dependent any of the following shall file an application for hearing with the Division of Adjudication:
    - (i) the employee;
    - (ii) a representative of the employee, the qualifications of whom are defined in rule by the commission; or
    - (iii) a dependent as described in Section 34A-2-403.
  - (b) To appeal the imposition of a penalty or other administrative act imposed by the division on the employer or its insurance carrier for failure to comply with this chapter or Chapter 3, Utah Occupational Disease Act, any of the following shall file an application for hearing with the Division of Adjudication:
    - (i) the employer;
    - (ii) the insurance carrier; or
    - (iii) a representative of either the employer or the insurance carrier, the qualifications of whom are defined in rule by the commission.
  - (c) A person providing goods or services described in Subsections 34A-2-407(12) and 34A-3-108(13) may file an application for hearing in accordance with Section 34A-2-407 or 34A-3-108.
  - (d) An attorney may file an application for hearing in accordance with Section 34A-1-309.
- (2)
- (a) Unless all parties agree to the assignment in writing, the Division of Adjudication may not assign the same administrative law judge to hear a claim under this section by an injured employee if the administrative law judge previously heard a claim by the same injured employee for a different injury or occupational disease.
  - (b) Unless all parties agree to the appointment in writing, an administrative law judge may not appoint the same medical panel or individual panel member to evaluate a claim by an injured employee if the medical panel or individual panel member previously evaluated a claim by the same injured employee for a different injury or occupational disease.
- (3) Unless a party in interest appeals the decision of an administrative law judge in accordance with Subsection (4), the decision of an administrative law judge on an application for hearing filed under Subsection (1) is a final order of the commission 30 days after the day on which the decision is issued. An administrative law judge shall issue a decision by no later than 60 days from the day on which the hearing is held under this part unless:
- (a) the parties agree to a longer period of time; or
  - (b) a decision within the 60-day period is impracticable.
- (4)
- (a) A party in interest may appeal the decision of an administrative law judge by filing a motion for review with the Division of Adjudication within 30 days of the date the decision is issued.
  - (b) Unless a party in interest to the appeal requests under Subsection (4)(c) that the appeal be heard by the Appeals Board, the commissioner shall hear the review.

- (c) A party in interest may request that an appeal be heard by the Appeals Board by filing the request with the Division of Adjudication:
  - (i) as part of the motion for review; or
  - (ii) if requested by a party in interest who did not file a motion for review, within 20 days of the day on which the motion for review is filed with the Division of Adjudication.
- (d) A case appealed to the Appeals Board shall be decided by the majority vote of the Appeals Board.
- (5) The Division of Adjudication shall maintain a record on appeal, including an appeal docket showing the receipt and disposition of the appeals on review.
- (6) Upon appeal, the commissioner or Appeals Board shall make its decision in accordance with Section 34A-1-303. The commissioner or Appeals Board shall issue a decision under this part by no later than 90 days from the day on which the motion for review is filed unless:
  - (a) the parties agree to a longer period of time; or
  - (b) a decision within the 90-day period is impracticable.
- (7) The commissioner or Appeals Board shall promptly notify the parties to a proceeding before it of its decision, including its findings and conclusions.
- (8)
  - (a) Subject to Subsection (8)(b), the decision of the commissioner or Appeals Board is final unless within 30 days after the date the decision is issued further appeal is initiated under the provisions of this section or Title 63G, Chapter 4, Administrative Procedures Act.
  - (b) In the case of an award of permanent total disability benefits under Section 34A-2-413, the decision of the commissioner or Appeals Board is a final order of the commission unless set aside by the court of appeals.
- (9)
  - (a) Within 30 days after the day on which the decision of the commissioner or Appeals Board is issued, an aggrieved party may secure judicial review by commencing an action in the court of appeals against the commissioner or Appeals Board for the review of the decision of the commissioner or Appeals Board.
  - (b) In an action filed under Subsection (9)(a):
    - (i) any other party to the proceeding before the commissioner or Appeals Board shall be made a party; and
    - (ii) the commission shall be made a party.
  - (c) A party claiming to be aggrieved may seek judicial review only if the party exhausts the party's remedies before the commission as provided by this section.
  - (d) At the request of the court of appeals, the commission shall certify and file with the court all documents and papers and a transcript of all testimony taken in the matter together with the decision of the commissioner or Appeals Board.
- (10)
  - (a) The commission shall make rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to facilitate timely completion of administrative actions under this part.
  - (b) The commission shall monitor the time from filing of an application for a hearing to issuance of a final order of the commission for cases brought under this part.

Amended by Chapter 187, 2016 General Session

Amended by Chapter 242, 2016 General Session

**34A-2-802 Rules of evidence and procedure before commission -- Admissible evidence.**

- (1) The commission, the commissioner, an administrative law judge, or the Appeals Board, is not bound by the usual common law or statutory rules of evidence, or by any technical or formal rules or procedure, other than as provided in this section or as adopted by the commission pursuant to this chapter and Chapter 3, Utah Occupational Disease Act. The commission may make its investigation in such manner as in its judgment is best calculated to ascertain the substantial rights of the parties and to carry out justly the spirit of the chapter.
- (2) The commission may receive as evidence and use as proof of any fact in dispute all evidence considered material and relevant including the following:
  - (a) depositions and sworn testimony presented in open hearings;
  - (b) reports of attending or examining physicians, or of pathologists;
  - (c) reports of investigators appointed by the commission;
  - (d) reports of employers, including copies of time sheets, book accounts, or other records; or
  - (e) hospital records in the case of an injured or diseased employee.

Amended by Chapter 297, 2011 General Session

**34A-2-803 Violation of judgments, orders, decrees, or provisions of chapter -- Grade of offense.**

- (1) An employer, employee, or other person is guilty of a misdemeanor if that employer, employee, or other person violates this chapter or Chapter 3, Utah Occupational Disease Act, including:
  - (a) doing any act prohibited by this chapter or Chapter 3, Utah Occupational Disease Act;
  - (b) failing or refusing to perform any duty lawfully imposed under this chapter or Chapter 3, Utah Occupational Disease Act;
  - (c) failing, neglecting, or refusing to obey any lawful order given or made by the commission, or any judgment or decree made by any court in connection with the provisions of this chapter or Chapter 3, Utah Occupational Disease Act.
- (2) Every day during which any person fails to observe and comply with any order of the commission, or to perform any duty imposed by this chapter or Chapter 3, Utah Occupational Disease Act, shall constitute a separate and distinct offense.

Renumbered and Amended by Chapter 375, 1997 General Session